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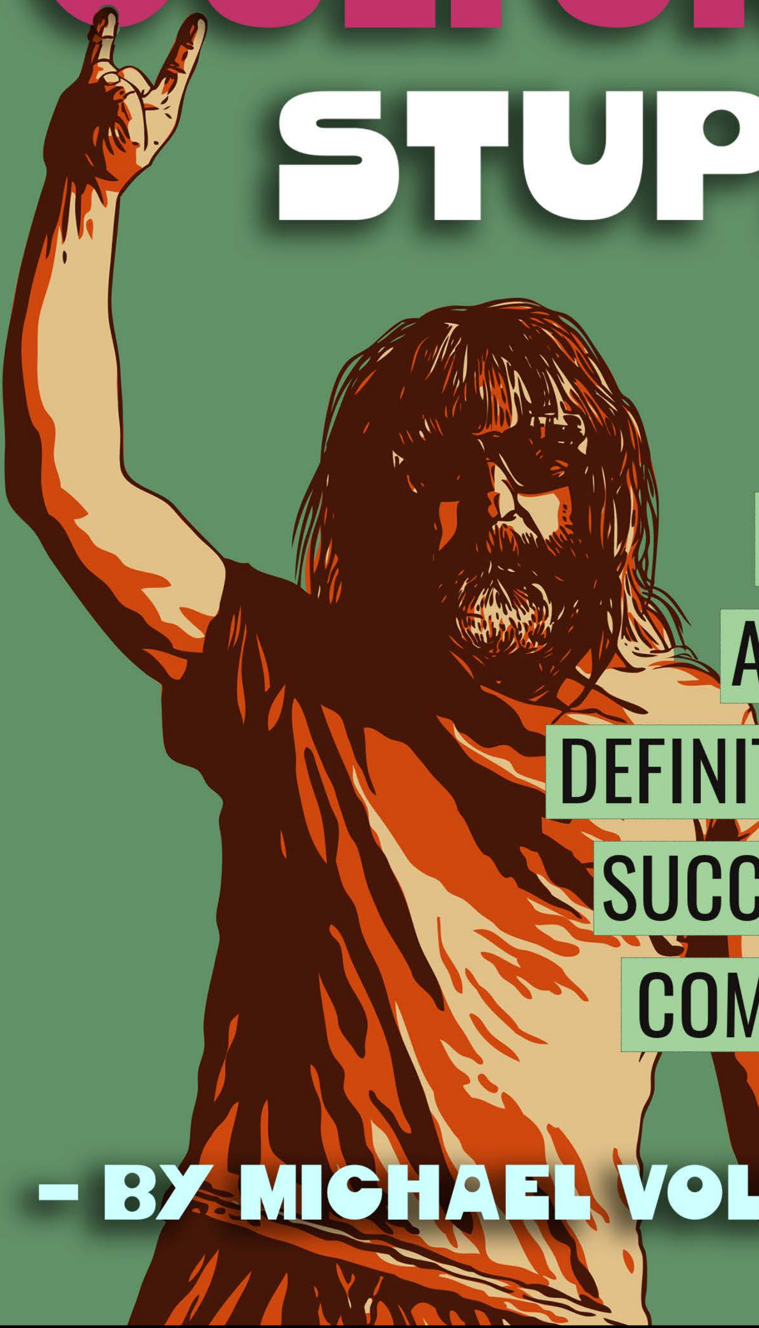
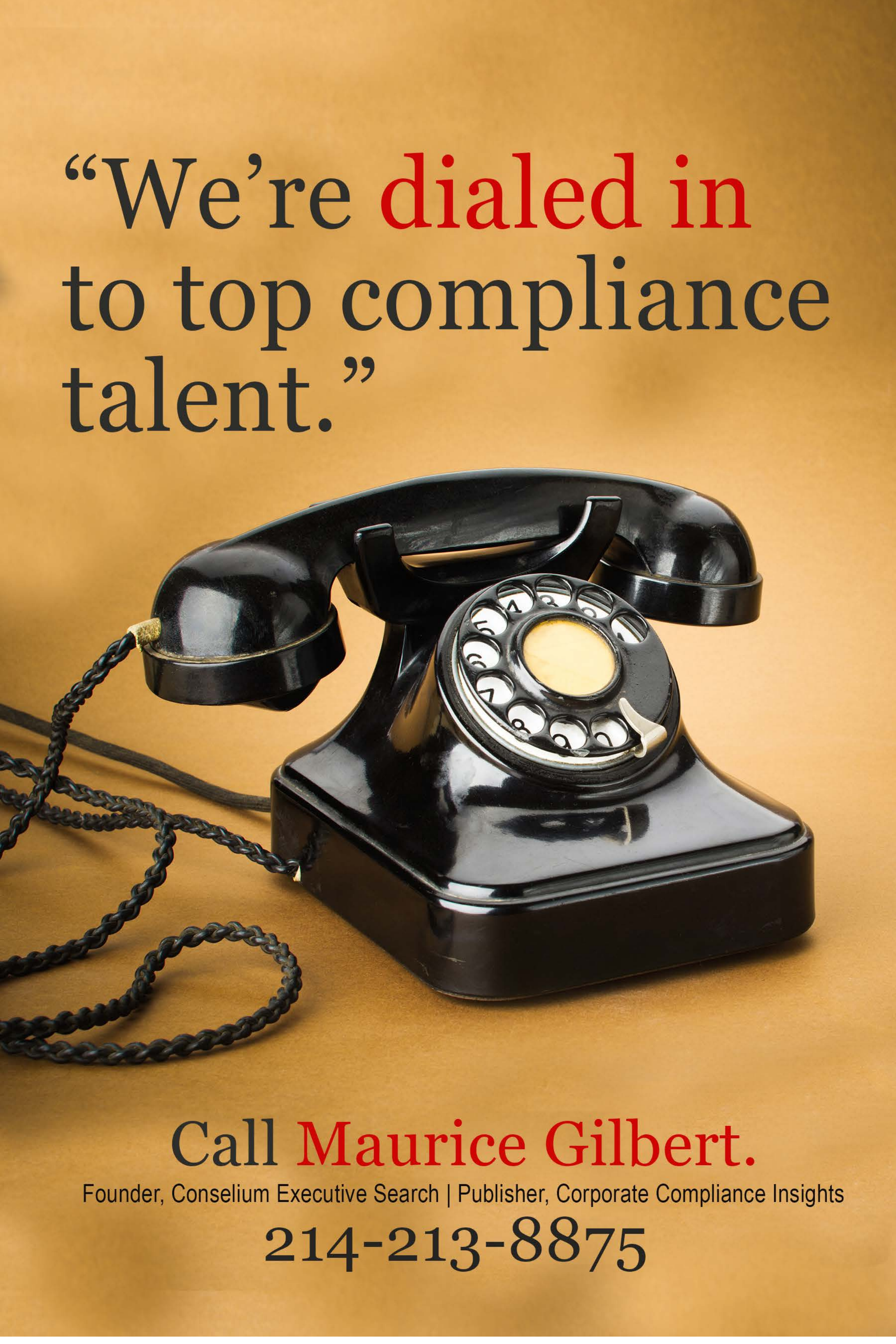


ETHICS AND THE DEFINITION OF SUCCESSFUL COMPANIES

- BY MICHAEL VOLKOV -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It’s the Culture, Stupid

Ethics and the Definition of Successful Companies

By Michael Volkov

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Dedication

To ethics and compliance officers, who, in the face of political and cultural challenges, continue to advance the importance of ethical conduct.

Foreword

It must be these turbulent times we live in. Each day we are overwhelmed by news of the latest ethical transgressions, the most recent legal scandal and the absence of normative societal behaviors. Some may say that writing a book about ethical business conduct is akin to Don Quixote traversing the countryside and tilting his lance at windmills.

My response, however, is that in today's world, ethical business culture is even more important. Standing alone, ethical business is a requirement for long-run success. Businesses without an ethical culture are doomed to suffer reputational harm and potential government enforcement.

I have long advocated for businesses to embrace and implement strategies to implement ethical controls and promote ethical conduct. My perspective reflects my own belief in the need for companies to utilize practical solutions, building on existing or known compliance strategies to advance an ethical culture.

Like a compliance program, a company's culture has to reflect careful design and tailoring to risks and its employees. Further, a company's culture has to be evaluated, monitored, tested and remediated. New strategies are needed beyond those in the obvious toolbox. Ethics requires creativity and metrics. "Feel good" pronouncements of ethical value will not accomplish anything unless every employee understands what the company expects from the employee in his/her day-to-day responsibilities.

Innovative leaders who are committed to building a corporate community based on trust and integrity are the ones who will succeed. Those who pretend to embrace this message or ignore the importance of an ethical culture will be left behind in our new and rapidly evolving economy.

Michael Volkov, August 2018

Chapter 1

The Inextricable Link – Ethics and Profitability

Here is another profound grasp of the obvious: All companies need to make a profit.

However, as companies begin to focus on long-term performance rather than short-term quarterly objectives, innovative leaders believe that profitability can be achieved without sacrificing social, environmental and moral considerations. To the contrary, the long-term success of a business may only thrive when it reflects the needs of its stakeholders, such as employees, government, suppliers, communities and customers.

The link among ethics, productivity, performance and, ultimately, profits is inextricable. I have written and spoken extensively on the subject. The link is backed by extensive research and common sense (**here**, **here** and **here**).

Managers and employees want to believe in their company. It is a natural human instinct; we want to believe our work is important and that it contributes to the overall good. In this case, the company's mission, if defined in a positive way, will incentivize employees who want to believe in the greater good.

Employees want to believe in what the company believes and to share the common objective. Of course, employees want to be treated and compensated fairly, but when the link between employee morale is enhanced, employee productivity increases and employee misconduct rates decline (significantly).

Ethical behavior improves performance – financially and personally. To put it simply, ethical conduct is good business. But ethical conduct cannot be imposed by detailed rules and requirements. Ethical conduct is built on principles and values, exemplary conduct, communications and observation.

Ethical businesses are much easier to manage and operate in comparison to unethical businesses that turn a blind eye to employee misconduct. Assuming that people operate with a conscience (sometimes I wonder), unethical conduct requires worrying, rationalization and efforts to hide or disguise the misdeeds. In other words, unethical conduct takes energy and effort.

It is easier to run a business with honesty and integrity as your cornerstones. An ethical business owner can harness the company's passion, drive and energy. A leader who believes in the company's business can inspire others at the company to believe in the business. Such an attitude can extend beyond the company to interactions with external stakeholders and exponentially increase positive benefits to the company.

Consumers share the common desire to believe in a company's product or service. Consumers who display brand loyalty make purchasing decisions based in significant measure on belief in a company and its mission. Simon Sinek, a fascinating speaker, has outlined this connection. See **here** for a fascinating discussion on great leaders and successful companies such as Apple.

The message from the company should be that the company's ethical values encompass not just what the company does, but also how the company does it. This is an important building block to achieving a sustainable business. Of course, some consumers will embrace unethical companies, especially if there is a price discount that goes along with the transaction. But research has shown that companies that communicate ethical conduct may be able to charge consumers an ethical premium (**here**).

In this era of so-called "fake news" and other controversies surrounding information accuracy and misleading behaviors, we will inevitably (or at least hopefully) demand a return to honesty, especially when it comes to our corporate business leaders and employers. It is a turbulent time for sure, but employees and consumers desire honesty and integrity in the workplace. Consumers and the general public are ready to reward honesty, and businesses need to heed this trend.

"Ethical businesses are much easier to manage and operate in comparison to unethical businesses that turn a blind eye to employee misconduct."

Companies will find that trust and integrity are the bedrock principles that foster sustainable corporate business. Trust demands accountability by management in its relationship with employees. If accountability is ignored, then the fabric of trust will be stretched. Corporate leaders only have one chance to ensure trust; once broken, it is nearly impossible to restore.

Chapter 2

Defining Corporate Ethics and Culture

Companies are getting on the bandwagon – corporate culture matters. Business ethics is important. My worry is whether this new acknowledgement is viewed as a shortcut for compliance investment.

CEOs and the board are troubled by (and even resisting) the resources needed to implement an effective compliance program. Unfortunately, this attitude reflects a fundamental misunderstanding of the importance of an ethical culture and robust compliance controls working in tandem to promote an effective ethics and compliance program.

With that initial understanding, let's turn to the fundamental question: How do you define a culture that aligns with and inspires your employees?

Let's go back to another fundamental question every company has to answer: What is our purpose?

I am always inspired here by Simon Sinek, a motivational speaker, who explains the importance of defining your company's mission (**here** and **here**). Frankly, Sinek's message applies to much of life and helps to focus attention on purpose and inspiration.

A company has to define its mission beyond good products or efficient services. Instead, companies have to inspire managers, employees and other stakeholders with defining a purpose beyond simple commercial activities. Such inspiration is essential for the marketplace and for defining a culture.

Culture is not a complex issue and should not be over-analyzed or made complex. Companies have to adopt a basic set of values – trust and integrity – and then communicate and act in accordance with those values.

CCOs and corporate leaders confuse the issue by adopting a *complex* set of values and by committing to messaging strategies without integrating the values into conduct. Words are cheap; employees need to observe or hear of conduct that exemplifies the company's value.

CEOs often "check off" their responsibility for a company's culture by recording a few videos or sending out corporate ethics and compliance newsletters. When the company's culture fails to fall in line, CEOs are often at a loss as to why the messaging strategy did not succeed.

The corporate board, CEOs and senior executives have to commit to much more than messaging; they have to live and breathe the company's culture, cite the importance of trust and integrity at meetings and demonstrate commitment through conduct and by keeping their word with employees and other stakeholders.

CEOs often ignore this important priority, despite overwhelming research on the importance of corporate culture to a company's bottom-line success. Researchers have estimated that corporate culture accounts for 20 to 40 percent of a company's stock value.

In the end, a company that does not make trust its most important value is bound to suffer problems.

Chapter 3

The Importance of an Ethical Culture

A company's culture reflects its values, its moral fabric and the reason it exists. I know this sounds like mumbo jumbo, but corporate culture reflects the company's ability to bring individuals together for a common purpose.

Harvard Business School Professor James Heskett has written about the importance of business culture in his seminal book, "The Culture Cycle: How to Shape the Unseen Force That Transforms Performance," (**here**) in which he estimates that a positive corporate culture can account for a 20 to 30 percent difference in corporate performance.

As Heskett explains, the culture cycle begins with communicating shared values and behaviors and includes developing realistic expectations in employees (as well as meeting them in ways that establish trust, engagement and ownership), creating policies and practices that lead to an innovative organization and measuring the results in terms of employee retention and referrals, returns to labor and relationships with customers, as well as financial results.

A company's culture can be defined in six categories:

1. **Vision** – A culture starts with a vision or mission statement that captures the company's purpose.
2. **Values** – A company's values should be concise and simple.
3. **Conduct** – The company leadership has to demonstrate its commitment to its culture with conduct, not with words.

4. **People** – The culture has to infuse the company's recruitment process, ensuring personnel are hired who are consistent with its culture.
5. **Narrative (Storytelling)** – The company has to develop a unique and powerful narrative to reinforce and promote its culture. A unique narrative can be a short story that is frequently retold and referenced by corporate leaders, incorporated into publications and communications and added to the company's sustainability objectives.
6. **Environment** – The company's offices, architecture, working environment and space should be consistent with its culture and used as a means to reinforce its culture.

Bringing employees together through a consistent and motivational message is critical to improve corporate performance. No longer can companies rely on quarterly financial reporting goals to define and incentivize the workforce.

The preferred strategy for corporate success is long-term sustainable growth while minimizing risk; this approach is the best way to harness employee innovation and productivity.

Assuming that a company is willing to define its ethical and organizational values, a company has to align its values and principles with its senior executives, managers and employees. In other words, a company has to define its ethical principles with the ultimate goal of securing buy-in from these important constituencies. If a company fails to align its values and principles with its key constituencies, the company will suffer from an ethical disconnect – a situation where employees do not believe in the company's mission and resist corporate definitions of purpose. When this occurs, a corporate culture is sure to suffer from cynicism and discontent.

At bottom, employees want to believe in the company's senior leadership and corporate mission. Employees need to believe in the work they do and the overall positive impact of the company and its products and services.

In the end, this raises a difficult question for every company: While the company has defined its ethical principles and values, how do these values and principles translate into every employee's daily responsibilities?

The values and principles all sound good, but employees want to know how this impacts their jobs.

This is the essential question for ethical cultures: What do the company's ethical values mean for its employees?

A company has to answer these questions with real and tangible explanations. For every engagement, a company expects the employee to:

- Act with honesty
- Treat co-workers, business partners and customers with respect
- Report colleagues and business partners who engage in misconduct
- Seek guidance from a supervisor or compliance staff when a question arises about how to handle a specific business situation

A company has to bring reality to the equation and explain how its ethical principles work in practice. Senior management has to conduct themselves in a manner that promotes the company's ethical principles. Such conduct serves as a teaching example for every employee. These examples of conduct show that the company is committed to its ethical principles and that it lives by its word.

Chapter 4

Keeping Ethics and Culture Simple

As more attention is paid to the importance of an ethical culture, I wanted to first offer some general observations. The field of business ethics is thick with definitions, moral arguments and theoretical discussions, most of which are interesting from an academic perspective. I would never offer my own ethical principles or moral values as a guidepost for businesses to build an ethical culture; instead, my approach is to find common ground with a company that aligns company constituencies or stakeholders in order to embed a set of principles and values.

No two companies share the same culture or set of company values and principles. Each company is distinct, like the products and services they provide and the community in which they operate.

First, we start with an obvious assumption: Companies need to implement an *ethics and compliance* program. I have insisted on placing the term "ethics" in front of "compliance" to underscore the point that a company's ethical culture transcends a company's legal compliance. If we are to apply rules of statutory construction (I know, which do not apply), the fact is that ethics is more than and separate from legal compliance.

Second, the term "ethics" in the business context applies to business operations involving the purchase and sale of goods and services in the marketplace. In reality, business is hard to separate from many other aspects of our lives, so business ethics has a broad application and impact on society, and it necessarily reflects our personal values.

Given the vast presence and impact of business ethics, there are numerous important questions business ethics should address, including the responsibilities of business owners, managers and employees and external engagements with customers, suppliers, the public, government and communities. It is easy to get lost or twisted up in these esoteric, but very important issues.

From my perspective, business ethics is defined as the company's values and principles guiding its internal operations and relationships with external parties, such as customers, suppliers, government, communities and the public. These ethical principles infuse every aspect of the company's internal and external operations and include questions beyond compliance with the law.

We always hear about doing the "right" thing as an ethical principle that requires more than what the law requires, thereby implicating every person's own moral definition of what is right and what is wrong. Such a definition is too limited in my view.

I look to other principles, such as trust and integrity. The term "trust" is predicated on a relationship between employer and employee and between leaders and followers. Similarly, the term "integrity" suggests more than doing the "right thing;" it encompasses acting toward one another with honesty and truthfulness.

A third principle, fairness, should be considered as a separate and important value. It is something we all demand in life from friends, family and colleagues. Employees look for fairness in their interactions at a company. When fairness is present, the company can build on this foundation to raise ethical performance and conduct.

Each company should define its set of ethics or values to guide its behavior. This is an important process that has to resonate with all relevant stakeholders, including board members, senior management, managers, employees and shareholders. A company cannot adopt these principles without proper regard for the personal values of its actors – from the employee to the chairperson of the board.

A company's ethical principles are not up for a democratic vote by its employees, but the principles have to reflect the corporate mission and inspire trust and integrity from all of its actors. These are not inconsistent ideas, because individual employees have joined the company for a reason – sometimes in part because of the greater corporate mission, the company' reputation, or the trust and integrity factor the employee perceives.

The crafting of the company's ethical principles has been successful when those values are properly "aligned" among leadership, management and employees. The principles reflect a common understanding and buy-in from each of these constituencies. This alignment has to be reinforced by corporate performance, conduct of its leaders and communications and should be subject to measurement and monitoring.

The company's ethical principles and moral values should be written and communicated in the company's code of business ethics and conduct. This important document governs business operations and sets forth principles that set standards for accountability.

The company's defined values govern every aspect of its operations. The code should address the importance of corporate profitability, social responsibility, principles governing day-to-day conduct and the interests of stakeholders, including governments, employees, shareholders, suppliers, communities and customers.

Chapter 5

Building an Ethical Culture

What exactly does "corporate culture" mean? Compliance professionals often talk about how important "tone from the top" or the "mood in the middle" is, but what does that really mean?

Improving corporate culture has been directly tied to higher profits and a wide range of benefits to all stakeholders. A recent study by the National Bureau of Economic Research (NBER) (**here**) found that 91 percent of executives consider corporate culture to be "very important" or "important" at their firm, and 79 percent rank culture as at least a "top five" factor among all of the things that make their firms valuable. A strong company culture is correlated with higher employee retention rates, increased creative thinking and more collaborative work, a decreased likelihood of whistleblowing and, at the end, a more profitable company. Statistical research and empirical studies support these conclusions.

But building culture requires a paradigm shift from compliance departments. Traditionally, the ethics and compliance function has been focused on program components – such as training or policies and procedures – but research has shown again and again that we must shift our focus to include corporate culture and the underlying values held by the organization. This will not only improve compliance with legal and regulatory requirements, but also build a foundation where employees make decisions and act on the organization's values, even when no one is looking.

Here's an example of the paradigm shift compliance departments need to make: Ask yourself why we slow down at school crossings. Is it to avoid a ticket or to protect nearby children?

As a society, we want the answer to be the latter. Your company should seek to build a similar mindset with its own culture. Employees, managers and executives should seek to make the ethical choice, which includes compliance with relevant laws and regulations. In the FCPA context, "we don't bribe because it is against the law" should be replaced by "we don't bribe because it is not ethical."

But measuring and building culture is not simple. It is not as easy to report on as a 99 percent training completion rate. It is also not as easy to communicate success or problems with corporate culture as with other metrics. The NBER study notes that "corporate culture is a difficult-to-observe force within companies," and focuses closely on the process it uses to collect and analyze data. That is putting it mildly; corporate culture is difficult to observe… and measure, and change and establish.

Corporate culture must be conscientiously built – this is where ethics and compliance departments and professionals must take the lead. Corporate culture must be communicated through simple messages about the values the company believes in and, at the same time, it must leverage corporate governance mechanisms, such as the program components mentioned earlier, to strengthen and reinforce these values. For example, including values-based metrics in employee performance reviews that, ultimately, will lead to increased compensation.

These could be whether or not the employee collaborates with colleagues or acts as an ethics leader. Another example is structuring compensation to reward long-term success instead of short-term profits.

Here are three simple steps to start integrating corporate culture into your compliance program:

1. **Understand where corporate culture is now.** Using tools like surveys, interviews and focus groups allows you to measure what your employees and managers value now and what your workplace norms are. Use simple questions in surveys to increase participation rates, saving more in-depth discussions for interviews and focus groups. Ask questions about what employees' values are and how they act in the workplace.

> *"Corporate culture must be conscientiously built – this is where ethics and compliance departments and professionals must take the lead."*

2. **Work to define what values should guide your organization.** These will form the basis for the corporate culture you want to build and your compliance program as a whole. Use the information you gathered in the first step to understand where your weak points are. Most importantly, set a message that will be understood across your organization, considering cultural or location differences.
3. **Put the two together and design an implementation process to build and improve on what you have** – not only in your policies and procedures and training programs, but throughout the entire compliance communication structure. Use meetings, emails, social media and any other chance you have to emphasize corporate values. Your ultimate goal is to ensure corporate values are reflected within the daily activities of your employees, managers and executives.

To get the process started, it is important to get the support and buy-in of senior executives and company leaders. Their message has the greatest impact on company values as perceived by employees and mid-level managers. Involving them in the first steps will build buy-in and ongoing support. To do that, start with the same message about improving profitably and corporate performance as I did here… it works.

Chapter 6

The Role of the CEO

In the business world, answering questions is not the same as in the game show "Jeopardy." Nor does it require an answer in the form of a question (thank goodness, although that is not a bad strategy). CEOs are used to being put on the spot and doing the CEO-shuffle. They are good at it – they have to answer questions from key stakeholders, the media and sometimes even the public.

Corporate boards, hopefully, will be embracing a new model of corporate governance. As part of this new era, corporate boards need to focus on company culture. As they do so, they need to ask the CEO some basic questions about the company's culture.

This is part of the process to advance accountability – the board and the CEO have to be held accountable for preserving and promoting the company's culture. After all, it is usually the company's most valuable intangible asset.

We all know the research showing how important a company's culture and reputation are to its overall performance and value.

Corporate boards and CEOs understand this idea, yet in many ways they do not know how to assess, manage, monitor and advance the company's culture. Because culture is not "tangible," board members and CEOs tend to ignore the issue or fail to demand that the CCO develop techniques to assess, measure and manage the company's culture.

To further stress the importance a company's culture, the board needs to ask the CEO three important questions.

1. What is the company's culture?

Call it the first round of "Jeopardy." The CEO needs to be able to define, explain and articulate the company's culture. This will provide an important indication of just how accessible and meaningful the company's culture is to the performance of the company.

There are two wrong answers to this question.

First, the company's culture cannot be "do the right thing." This phrase is overused and fails to advance a specific approach to build buy-in from employees. It is important to remember that the company's culture has to be defined in a manner that aligns with the corporation and its leadership, managers and employees. "Doing the right thing" is not a call to arms or a mission, nor is it a way to define a positive message.

Conversely, the company's culture cannot be defined in esoteric terms. I recall a transportation company's cultural definition as expressed in the phrase "treating humans with dignity." I understand that transportation provides important services to promote business relationships and bring families together and do so safely and reliably. But where do we get to the point of "treating humans with dignity"?

In the end, the company's culture has to be expressed in its beliefs and mission. Employees want to believe in what the company believes in and to further that mission. A culture has to be defined in this context.

2. What specific actions do you plan to take to promote the company's culture?

A CEO has to answer this question with much more than just the standard answer of "I live it every day" or "I communicate this point at every town hall or internal meeting." It is not enough to use words to promote a culture; we all know about the videos, CEO letters written by CCOs and newsletter communications. My answer to that is "so what?" The question is intended to cause the CEO to think about his/her conduct and how they can advance the company's culture through action, not mere words.

Some examples of this are easy to list: a CEO is the first to take training classes and promotes that fact; the CEO requires the CCO to attend and participate in senior business management meetings to ensure that the company filters its business decisions through ethics and compliance values; the CEO carries the company's code of conduct with him/her and brings it to every meeting; the CEO attends and speaks at every new employee hiring meeting and explains the importance of ethics and compliance and the company's culture; the CEO rejects a business strategy because it was inconsistent with the company's ethical culture.

3. What steps will you take to measure culture, promote culture in the company and remediate culture weaknesses?

The CEO has to treat the company' culture as its most important intangible asset. Just like the company's tangible assets that need to be protected, the CEO has to articulate how he/she will ensure that the company's culture will be protected.

In response, the CEO needs to describe his/her actions and how he/she will hold senior management, the CCO, managers and employees accountable for the company's culture. When a senior manager harms a company's assets, the manager is held accountable for his/her failure. When an employee steals an asset from the company, the employee is disciplined and probably fired. The key strategy here is accountability. A CEO has to define what he/she expects from senior managers, the CCO, managers and employees with respect to the company's culture, and the CEO must hold these actors accountable for their performance as part of incentives and annual evaluations.

A CCO plays a critical role in this area and has to ensure that he/she regularly reports to the CEO on the company's culture. Such reporting has to involve measurement and monitoring of the company's culture, along with strategies to intervene and remediate culture weaknesses.

Chapter 7

The Interplay of Ethical Culture and Compliance Controls

A basic truism is "ethics and compliance reinforce each other." An ethical culture is an effective control against violations of law and a company's code of conduct. Conversely, legal compliance promotes a company's commitment to an ethical culture.

A larger global company is more likely to identify reputational risks as its greatest threat.

My favorite Warren Buffet quote on the value of a company's reputation makes the point:

"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently."

A company faces a myriad of risks, some within its control and some outside of its control. Assuming a company's reputation is a very valuable intangible asset, everyone should understand the importance of protecting and promoting the company's reputation.

A company's commitment to an ethical culture is the most effective way to embed and promote its reputational value. Maintaining an effective legal compliance program is not as effective as an ethical culture in protecting a company's reputation. What do I mean by that?

We all encounter situations in which a legal solution may differ from the ethical solution to a business decision. In some cases, even though the company can choose a course of action because the legal risks are relatively low, the ethical principles applicable to the situation may be more important, especially when the company considers its reputational risks.

For example, assume that a company is considering whether to pay its vendors in 60 days after invoice in accordance with its contracts or change its policy unilaterally to make all payments 75 days after invoice. The legal analysis of such a change in policy, assuming there is no change in written contracts, may conclude that the risk of litigation from its vendors for the 15-day extension of payments is very low.

On the other hand, if the same issue is analyzed in accordance with the company's ethical principles, such as fair dealing and honesty, the company is likely to reach a different conclusion and retain the 60-day policy. Why?

The company could easily conclude that a unilateral change in payment policy from 60 to 75 days, while raising low legal risks, would send the wrong message to its vendors and threaten the value of the company's word or its commitment to negotiated business deals. While the legal risk is low, the damage to the company's relationships with its vendors, and even other stakeholders, including its customers, may suffer real and significant harm.

> ***"A company's commitment to ethics is the most effective means to preserve and protect the company's reputation."***
>
> *- Warren Buffet*

This is a perfect example of the value of a company's ethical culture, which is tied to protecting and promoting its reputation. It is too "easy" to restrict corporate decision-making to legal principles – decisions that may have negative consequences on a company are not coextensive with the legal versus illegal dichotomy, much less considering only litigation risks.

A company's reputation is its bond with key stakeholders – employees, vendors/suppliers, shareholders, customers, government and community interests. Once a company's reputation is broken, as Warren Buffet so eloquently stated, the company has lost an intangible asset of considerable value. A company's commitment to ethics is the most effective means to preserve and protect the company's reputation. Frankly, they go hand in hand and mutually reinforce each other.

Chapter 8

Ethical Cultures are the Most Effective Internal Control

Compliance practitioners divide their commentary and insights into two general categories: ethical culture and compliance controls. It is easy to divide compliance issues into these two categories. Ethical culture articles are a little less concrete; compliance controls are practical and focused on policies and procedures.

"Compliance controls by themselves are insufficient to achieve an effective ethics and compliance program."

A compliance program cannot be deemed effective, however, unless there is a combination of these two important functions. An ethical culture is the most effective compliance control. Employees in ethical companies are far less likely to engage in misconduct and much more likely to report someone else who they suspect is engaged in misconduct. This basic principle is a critical control that applies across the board in every aspect of a compliance program and the company's business.

Compliance policies and procedures are critical to promote an ethical culture and provide important mechanisms to mitigate risk and ensure proper accounting and use of funds. As I frequently say, you can design compliance policies and procedures that are works of art, efficient and well-drafted, but in the absence of a commitment to a culture of compliance and ethical conduct, the policies and procedures are unlikely to succeed. Compliance controls by themselves are insufficient to achieve an effective ethics and compliance program.

Culture and controls go hand in hand; one cannot be effective without the other. Chief compliance officers who focus on one area to the detriment of the other are going to struggle. I have seen examples of both extremes. An effective ethics and compliance program depends on a careful and sensitive balance of these two objectives.

It is easy to see how each of these objectives reinforce the other. An ethical culture depends on specific policies and procedures to guide important compliance functions. A third-party intermediary cannot be engaged without completing the due diligence process. Of course, the company will apply ethical business principles when it engages the third party. Before that, however, the company has to follow its due diligence controls to ensure proper screening and analysis.

A company's culture of ethics is a fundamental requirement to ensure that employees follow compliance policies and procedures. It is always surprising that employees can avoid a policy or procedure without any serious consequences. Just ask yourself how many third parties were engaged without completing any due diligence. Or examine how many vendors or suppliers were engaged without going through the onboarding process.

In a company with a strong ethical culture, compliance with policies and procedures is likely to be much higher than at a company with a weak ethical culture. Employees are likely to perceive a rule-based compliance program differently than a balanced combination of ethical culture and compliance controls.

A company's balance between these two basic strategies may vary in different countries; some areas may be more rule-based, while others may work more effectively by emphasizing ethical values and principles. The differences may not be significant, but the emphasis can be important, depending on the audience and specific local conditions.

Chapter 9

The Importance of a Chief Ethics Officer or Chief Ethics and Compliance Officer

With an increasing focus on the value of an ethical culture, I have been reading more about chief ethics officers, the separation of ethics and compliance and the traveling ethics officer who meets with employees to discuss ethics. Forgive me for being a contrarian, but everyone is missing the point about an ethical culture.

A company does not instill and promote an ethical culture by spreading "happy talk" about ethical values, principles and the importance of an ethical culture. Rather, the words and communications efforts are a small part of what is really much more important: ensuring ethical conduct, measuring ethical values and promoting ethical business decision-making.

What do I mean by all of this?

First, an ethical culture depends on conduct, actions and controls. A CEO has to be committed to the company's ethical values – and demonstrate this commitment in his/her actions. The senior executive team has to make a similar commitment. In this respect, their conduct makes it clear whether the company has a real commitment to ethical business actions. To the extent their decisions or actions have to be communicated to ensure everyone is aware of these steps or actions, a communications strategy should be adopted to spread the word.

Take for example, a decision by the business to decline to move forward with an acquisition or a joint venture arrangement based on among other things, compliance and culture concerns – in other words, the potential acquisition or joint venture was not a good fit financially and culture-wise. The company's decision not to move forward should be explained to reinforce the importance of culture as an important factor.

Second, the company has to take affirmative steps to train and require business decisions to include consideration of ethical factors. Does a supply contract with a company that has been prosecuted for environmental, health and safety or labor violations make sense? A company may choose not to do business with a particular supplier or vendor because of reputational concerns created by such a relationship. The company may very well ask as part of its vendor/supplier consideration whether such an alliance is consistent with its ethical culture. Again, this is an issue that should be examined and publicized internally if the reputational concerns are significant enough to cause the company to decline to do business with the offensive vendor/supplier.

Third, a company' culture has to be measured in order to determine whether the message and requirements are getting through. It is not hard to measure a company's culture. It can be done across the company, although I favor more targeted surveys along with focus groups, which I recognize are less scientific, but still valuable for insights. A survey can quickly uncover the strength of a company's ethical culture by asking employees questions on a variety of topics, including:

1. the board's commitment to ethics,
2. top management's commitment to ethics,
3. the company's overall values and principles,
4. employee instances of misconduct and
5. willingness to report employee misconduct.

I do not mean to belittle communications efforts by chief ethics officers promoting internally the value of ethics. Nor do I oppose separating ethics and compliance functions. My concern is that ethical values and principles have to be instilled in a company in real and tangible ways. Words are all well and good, but ethics demands action and commitment, not just "feel good" affirmations that have neither any bearing nor relationship to the company's actual business operations.

"I do not mean to belittle communications efforts by chief ethics officers promoting internally the value of ethics. Nor do I oppose separating ethics and compliance functions."

Every compliance officer should insist on and embrace the title of "Chief *Ethics and* Compliance Officer." Some larger organizations have a separate ethics officer, and I am not suggesting merging the positions. Every company should have a chief ethics officer, either as a separate function or as part of the compliance function. In mid-size and smaller organizations, the chief compliance officer should be responsible as the chief ethics and compliance officer for both the company's ethical culture and compliance with the law and the code of conduct.

Compliance is about much more than just following the law and the company's code of conduct. A company has to define, maintain and promote its ethical culture. And a chief compliance officer has to recognize the importance of the company's ethical culture. As I often say, an ethical culture is the most effective control a company can implement.

CCOs have to avoid a narrow focus on the intricacies of compliance controls to the detriment of the company's culture. A company's culture is reflected in its controls and overall compliance with the law and code of conduct. Too often, chief compliance officers carry ethics around as an afterthought to the company's compliance program. The legal intricacies and day-to-day management of compliance controls can be overwhelming when you consider the scale and monitoring, oversight, review and continuous improvement responsibilities.

If you assume that the company's ethical culture is a valuable intangible asset and an effective compliance control, it is easy to conclude that CCOs need to refocus their efforts and attend to the company's culture.

To do so, CCOs have to assume responsibility for the company's culture, assuming the company already has defined its values and principles. A values statement is essential and must be concise and to the point.

A company's culture, once defined, has to be communicated and embedded in the workforce. On a number of occasions, I have observed employees who ask a very specific question: How does the company's ethical culture and values apply to my job? CCOs have to anticipate this question and address the meaning of the company's values statement in real and concrete terms.

This is where the CEO and senior management have to communicate in words and in conduct how they live by the company's values, as reflected in the values statement and the company's code of conduct. Without this support and effort, the company's attempt to embed its culture will fail.

To reinforce this message, the CCO has to conduct training on the company's culture as part of the code of conduct training, provide concrete examples tailored to the specific audience and make sure managers and supervisors repeat the message.

One of the more important strategies a CCO has to use to train and enlist the support of managers and supervisors is to promote, reinforce and communicate brief daily ethics messages to immediate employees. These ethics reminders are critical. This is ethics on the front lines and in the trenches, where it counts.

A CCO has to measure and monitor the company's culture by partnering with human resources. Periodic measurements of discrete functions, divisions, product lines and geographic units should be conducted on a rotating and rolling basis so that the CCO and HR can collect data on whether the company's culture is being embraced, how to fine-tune its operations and whether remediation may be required. Focus groups and targeted interviews provide additional data points.

With this active culture program, CCOs have an obligation to educate and report to the board, the CEO and management on the company's culture. If necessary, additional efforts may be needed to address specific deficiencies in the company's culture.

There is much more to be done, but these are just some of the basic requirements for defining and maintaining an active compliance culture program. Companies have developed creative strategies and maximize opportunities to reinforce culture messaging and conduct; it is the lifeblood of every company, and it should be part of every CCO's lifeblood.

Chapter 10

Ethical Cultures and Practical Strategies

The challenge for corporations is to build practical approaches to business ethics and specific corporate values. Business ethics as a field is all well and good, but we need to start sharing specific and practical strategies to infuse our day-to-day conduct and advance our corporate performance.

In doing so, I am not so limited nor naïve to suggest that the only measure is corporate profitability. On the contrary, there are numerous ways in which a company reflects its ethics, including:

- maintaining a safe and secure workplace,
- preventing discrimination and harassment,
- reducing rates of employee misconduct,
- building loyalty with consumers and suppliers,
- maintaining a speak-up culture,
- rewarding ethical conduct and
- reducing litigation and business disputes.

The problem is that businesses ignore the connection between ethical principles and practical results from such principles. Instead of addressing this issue, I could list 10 ethical principles and call it a day: honesty, loyalty, fairness, integrity, trust, accountability, listening to others, excellence, caring/empathy and respect. But let's make this a practical discussion.

So, let's take a hypothetical set of values and apply them to a business. Start with trust, integrity and fairness. Based on these three powerful concepts, we want to reflect these values in the following areas: diversity, a safe and secure workplace, commercial interactions, employee reporting, social media and corporate social responsibility.

Diversity: We live in a diverse world, and our company should reflect the importance of diversity – at the board level, in top management and in our overall workplace and relationships with outside vendors. A diverse workplace has to be a stated objective, and it should be measured and promoted as a way to build trust internally and externally with our employees, communities and government stakeholders. To protect our diverse company, the company has to aggressively stamp out real or perceived discrimination.

Safe and secure workplace: Companies have to maintain a safe and secure workplace. Employees' concerns have to be identified and addressed. There is no place for bullying, harassment or threats of physical or emotional harm. Again, if the company is committed to its principles, a safe and secure workplace must be protected.

Commercial interactions: A company conducts numerous business transactions each day with consumers, vendors, suppliers, agents, distributors and others. Business ethics need to be applied in each of these situations. Acting with honesty, fairness and integrity means that company actors do not cheat, lie, trick or engage in other behaviors designed to earn a transaction to the detriment of the other person. There is nothing wrong with aggressive competition, but within the confines of honesty, fairness and integrity. A company that emphasizes this approach will see positive gains while avoiding potentially unethical or illegal conduct.

Ethical business interactions ensure that the company's interactions are legal. In fact, there may be occasions where the ethical resolution of a dispute or a problem may exceed that which is legally required.

Employee reporting: Companies that encourage and respond promptly to employee concerns reflect a desire to build trust, act fairly and promote integrity in all of its dealings. Each employee concern gives the company valuable insight into its culture and its ethical performance. Companies committed to encouraging and responding promptly to employee concerns will build robust reporting systems, communicate the importance of a speak-up culture and respond swiftly to employee concerns by investigating any issues raised and remediating any specific concerns that are substantiated.

Social media: In today's fast-paced, hyperconnected world in which a company's reputation can be destroyed in a single viral incident, a company must tie its ethical principles to its use of social networking platforms, such as Facebook, LinkedIn, Snapchat and other sites. Human resources professionals face a myriad of challenges with regard to employee use of these platforms and would easily benefit from applying business ethics principles to this medium.

If the company is serious about building trust with internal and external stakeholders, company actors (board members, top management, supervisors and employees) have to be held accountable for use of social media (within the confines of labor laws). Corporate leaders can set examples of proper use by communicating with employees internally and projecting a positive message to external stakeholders about the company's ethical values and principles. Most importantly, the company can set an example of treating others with respect and avoiding online controversies.

Corporate social responsibility: Companies are devoting greater attention to social responsibility as an important means to promote their reputation as good corporate citizens. These programs build trust with external stakeholders and promote internal loyalty and pride among their leaders and employees.

Businesses, like other institutions, are valued for their good deeds, and a social responsibility program is an easy way for a company to demonstrate its commitment to the community as an outgrowth of its own employee values and moral principles.

Ethical culture is the flavor of the year these days. We are seeing more postings and articles about the importance of ethical culture and even ones pushing the idea of measuring and monitoring culture.

It was only eight years ago when the U.S. Sentencing Commission added ethics to the applicable guideline defining compliance program requirements. We have definitely come a long way since 2010.

An ethical culture takes work, and it is not just a mishmash of laudatory, "feel good" values and principles. I would argue that compliance officers have to be careful not to get lost in the "feel good" aspect of ethics, and remember the importance of applying practical measures to promoting a company's ethical values as an important guidepost for corporate conduct.

It is easy to get lost in the dizzying descriptions of "doing the right thing," or "acting with trust and integrity." A company's culture is not a political message or a call to arms. On the contrary, a company's culture is designed to promote several basic objectives:

1. to reduce employee misconduct,
2. to embed a speak-up culture,
3. to improve employee performance and reduce employee turnover,
4. to enhance corporate sustainability and financial performance and
5. to provide common principles for the company or

organization to project to others in the community, government, business partners, vendors and suppliers.

My point is that compliance practitioners have to keep their eye on the ball and approach company culture as an essential resource to be carefully monitored and promoted. CCOs may design all the fancy controls and policies they can dream up, but without a culture of ethics and compliance, their efforts are likely to end up in an ash heap of broken and ignored policies. This mission, however, is often confused with assembling and communicating a bunch of empty-value phrases that have no practical application to employees' work responsibilities and day-to-day conduct. Therein lies the rub – and the challenge.

A CCO has to devote time and attention to the company's ethical culture. Such efforts require quarterly reports to senior management and the audit/compliance committee on culture issues – measurements of geographic offices and divisions, focus group results, survey results and other creative approaches to engaging the company's culture.

For some reason, CCOs have satisfied their culture focus by relying on HR to conduct an annual or biannual survey of all employees concerning culture questions. A company that conducts these cut-and-paste surveys is basically ignoring its culture.

CCOs have to take the lead in this area and push the board, senior management, HR, managers and employees to engage on this critical issue. There are a number of creative strategies being employed in the compliance community, and professionals need to share culture strategies with each other.

One simple requirement a CCO can set for himself or herself is to report quarterly to the audit/compliance committee on the company's culture. In this way, the CCO will have to come up each quarter with a practical objective and result to report to the board. For example, the CCO may conduct a survey of a high-risk office or even a part of an office. Each quarter could be used to focus and report on one culture objective.

CCOs have to start from the beginning – a code of conduct and statement of corporate values. Based on this foundation, the CCO must adopt strategies and communications techniques to embed the company's culture, relying on a mix of board and senior management conduct to highlight, middle manager training and talking points to spread the culture message and principles and monitoring and evaluation projects to pay consistent attention to the company's culture.

CCOs should approach the company's culture just like any other control, recognizing that culture has a broad and significant impact on corporate conduct and financial performance. Many in the company may resist such attention to culture, but the CCO should continue to educate and enlist "believers" in the value of a company's culture and the substantial benefits from investing in culture promotion and management.

Chapter 11

Avoiding Culture Delusions of Grandeur

It is easy to say something and convince yourself it is true. Remember the scene from Seinfeld where Jerry had to take a polygraph examination after failing to admit that he watched "Melrose Place"? George Costanza advised, "Remember, Jerry. It's not a lie if you believe it." (see video **here**).

This statement from this episode (Season 6, Episode 16) reminds me of compliance professionals who routinely inform me that their company has an "ethical culture," and cite isolated statements of support made by the CEO to support their claim.

My reaction to such a statement varies – sometimes their statement is confirmed by my evaluation of the company's program, but often the statement rings hollow.

Compliance officers sometimes confuse their role in a company between cheerleader and objective analyst. In some cases, the compliance officer's personal belief is used to motivate (or convince) the compliance officer (or his/her staff) of his/her mission at the company – to instill a culture of ethics and compliance. Sometimes a compliance officer comes across as "needing" to believe in the company's culture of ethics as a requirement.

Compliance officers need to assess honestly their company's ethical culture. I suspect most will find their company's culture is deficient. I am not trying to launch a vitriolic complaint against CCOs, but I am reminding CCOs that an objective assessment of this issue is a basic prerequisite for implementation of an effective ethics and compliance program. A CCO who reflects this common scenario of unjustified belief reflects a significant weakness in a corporate compliance program. The CCO's belief often is based on misunderstanding (conscious or unconscious) in the board and/or CEO's commitment to a culture of ethics. A CCO cannot drink the Kool-Aid; instead, the CCO has to focus on solutions to the problem.

A CCO has to start with one basic principle: the company's culture of ethics requires work, not just by the CCO, but also by the board and the C-Suite. If the board and the C-Suite are not committed, the CCO has to retreat and begin to educate the board and C-Suite on the importance of a culture of ethics.

A CCO's education program has to emphasize and demonstrate to the board and the C-Suite the tangible benefits from a culture of ethics: increased profits, sustainable growth and improved employee morale and productivity. While obvious to many, the CCO has to devote time to educate others on this important issue.

A CCO's work is not finished there; it is just beginning. Perhaps the most difficult task is the dissemination of ethical principles to the company's business managers. To accomplish this task requires more than just indoctrinating the board and the C-Suite. The CCO has to ensure that business managers devote time and attention to building a culture of ethics in their employees.

To do so, business managers themselves must embrace this message and then convince their employees that the company is committed to its ethical culture through ethical business decisions and maintenance of important support functions, such as speak-up and hotline systems, prompt investigation and discipline of infractions, incentives to reward ethical business conduct and commitment via board and C-Suite conduct.

Once instilled, a company's culture of ethics requires ongoing monitoring through targeted surveys, focus groups and remediation in business operations to ensure ethically-based operations. A CCO's work in this area is never done, but provides important bottom-line benefits: The company's ethical culture is the most effective compliance control in the organization. An ethical culture creates a solid foundation on which to build compliance controls to mitigate risk and promote ethical conduct.

Chapter 12

Achieving an Ethical Culture by Emphasizing Conduct Over Words

"Action speaks louder than words, but not nearly as often."

– Mark Twain

If you take away nothing else, all I ask is that you read the Mark Twain quote and apply the message to creating an ethical culture.

As I always say, Mark Twain would have been a star chief compliance officer. He was an artist with words, and he used a minimal number of words to communicate powerful messages.

We all know that communicating ethics and compliance messages (even repeatedly and from the CEO and senior management), coupled with ethics training, is an important strategy. But words and messages have limits.

When it comes to creating and promoting an ethical culture, actions speak much louder than words. Managers and employees look for specific behaviors by their leaders that reinforce and demonstrate ethical conduct. These actions, as recounted within an organization, can create a powerful force for promoting an ethical culture.

There has been a lot of interesting research conducted on exactly how to define an promote an "ethical culture." See Jondle, Ardichvili and Mitchell 2013 (**here**).
Most companies focus on procedural frameworks and training programs to raise ethical awareness of employees. To this

end, companies adopt codes of ethical conduct and promote reporting of ethical violations.

This is all well and good, but according to researchers, more is needed to promote "individual moral development." In other words, a company has to instill in its employees a culture of "doing the right thing" so that individuals will conform to that norm or value when faced with difficult ethical choices.

To address individual ethical values, researchers have pointed to the importance of creating an ethical social environment through the use of norms, values, heroes and role models, organizational stories and historical anecdotes. While this listing is a mouthful, it all boils down to fostering internal communications among employees that recount stories, anecdotes and observations about their leaders. These informal communications reinforce a culture and promote the idea of social norms and values necessary for a culture of ethics.

From a practical perspective, I frequently hear from employees stories about their CEO's commitment to ethics and compliance and how he/she demonstrates such integrity. Often, these stories take on a life of their own, especially when a CEO or senior executive dramatically makes the point through his/her actions.

A CEO who is committed to ethics and compliance and not only repeats that message in his/her communications, but also demonstrates his/her commitment through actions will create a number of stories and anecdotes recounting his/her actions and ethical values.

This internal communications among managers and employees about the actions of the senior executives has a very powerful effect in an organization. These informal communications reinforce the more structured messages and programs designed to create and promote a culture of ethics — training, code of conduct, reporting of violations and other programs or procedures.

The converse is also true: a CEO who makes no commitment to ethics and compliance undermines the value of the structured program to promote a company's ethical culture. The absence of a tone at the top is a real missed opportunity. In some cases, it is a death knell for a compliance program because the CCO will have little chance of success in creating an ethical culture.

"The absence of a tone at the top is a real missed opportunity."

The bottom line is, a company's culture is created by a variety of forces – both formal and informal. At its heart, a culture must reflect the basic assumptions and beliefs shared among members of the organization. That can be the result of formal statements, codes of conduct and training programs, but without actions and conduct to reinforce these messages, the formal elements are likely to prove insufficient.

Chapter 13

Measuring and Monitoring Corporate Culture

Everyone agrees (or at least I think they should agree) that a company's most effective control is its culture.

For CCOs, selling the board and senior executives on this point should not be very hard. The research and common sense often come together to the same conclusion: an ethical company is more profitable in the long run. Just start with some basic "facts" (not alternative facts, but research-driven ones):

- employees who work at ethical companies are more productive and less likely to leave the company,
- misconduct rates among employees are lower at ethically driven companies, and
- employee reporting rates are higher at companies committed to a culture of ethics.

With these basic building blocks, a company with an ethical culture has a competitive advantage in the marketplace. Consumers, competitors, vendors, their communities and government institutions each have favorable views of the company, its leadership and its overall contribution to the economy and the community.

CCOs have to take a new approach – or at least adjust their existing approach. All too often, I see CCOs who attend to program elements, making sure that each is followed and working properly. Not enough attention is being paid to the most important control: the company's culture.

Culture is not so tangible or easily defined, but it can be measured, monitored and remediated. CCOs are very familiar with these latter concepts. CCOs and HR professionals know how to survey employees. They typically will coordinate an employee survey every two years to measure employee morale and overall culture. While those efforts are laudable, there needs to be a new approach taken that reflects a greater focus on the importance of culture.

To that end, I have often encouraged CCOs to consider conducting narrowly tailored culture surveys that may be restricted to certain regions, countries or areas where compliance concerns may be on the rise. Alternatively, there is no reason to require surveys of all employees when targeted surveys could be designed to middle managers and their abilities to communicate the company's cultural message, listen and respond to employee concerns and coordinate their efforts with compliance officers.

I know such an approach requires companies to break out into a new mold where traditional surveys are replaced with a more comprehensive approach that includes not only targeted surveys, but conducting focus groups, interviews and other ways to encourage employee communications about company values, culture and overall morale.

Once a company collects more culture data (e.g., surveys, focus groups, interviews), the company has the ability to measure the results over time, monitor the results and design remediation strategies to address weaknesses in its culture. This is not the most exact science, but CCOs have to start somewhere. CCOs must measure the impact of their current strategies – such as CEO statements, CEO messages, newsletters and other attempts – to promote corporate culture. It is not enough to videotape a CEO speaking generally about the company's culture and commitment to values-based principles. More has to be done to establish and promote a real commitment to a culture of ethics.

Chapter 14

Ethical Cultures and Employee Concerns

As parents, we all have been through the following scenario:

We encourage our children to communicate and voice their concerns and to learn to articulate, reason and understand perspectives. So, our kids start to speak up and we listen, patiently, but at some point, our patience wears thin, and we are not as interested or willing to listen. Our children begin to question our commitment to our "speak up and I'll listen" agreement.

This lesson applies with equal force in the corporate context. It is unfortunate but true that a company's expressed commitment to addressing employee concerns can be tested and eventually limited by its own actions and disregard of employee concerns.

I have witnessed this phenomenon. An employee will raise a concern directly with the company's audit committee chair, and the audit committee initiates its response procedures. A designated contact person reaches out to the employee, assures the employee that the company will investigate the matter and requests relevant information from the employee.

At this preliminary stage, the employee is exhilarated that he/she will be heard and provides detailed information to the designated audit committee contact. After reviewing the information, the contact reaches out to the employee to schedule a meeting.

The employee trusts the company's system and is convinced that he/she is being heard. The employee meets with the audit committee chair and continues to provide information concerning his/her issue of concern. The employee is satisfied that the concern will be addressed.

It is here where the positive interactions often break down. How?

Often one of two common scenarios occur.

First, the audit committee representative goes dark – no contact, no feedback and no communication. The employee follows up and still hears nothing but crickets from the audit committee designate. What happened?

Second, the audit committee designate sends an email to the employee requesting specific answers to a series of follow-up questions. Unfortunately, the questions are drafted in a manner to reflect an inherent bias against the employee's specific concerns. The questions reflect a desire to tilt the inquiry in the company's favor. The employee fears, at this point, that his/her concerns were not heard, but more importantly that the system is "rigged" against the employee. The employee loses trust in the system and will look for alternatives. What happened?

Both of these scenarios reflect a common problem. A company's expressed desire to listen is not backed up by a real commitment to listen, reflect, analyze and resolve. The company has no real commitment to objectivity; instead, the company has committed to one thing only: to go through the motions to defuse employee concerns without maintaining its credibility to listening and responding appropriately to the employee's concern.

Many companies operate at this level and are reluctant to acknowledge employee concerns' and the need to make changes. A culture that ignores its employees is just as likely to ignore its partners, its customers, its shareholders and other key stakeholders. It is a disease that can infect other areas of corporate operations and eventually undermine its ability to inspire trust and integrity.

We all know about the importance of active listening. It is an art and skill that successful individuals are able to employ in their careers and life relationships. A company, like any individual, has to commit to active listening – meaning understanding the employee’s concern, considering the employee’s point from his/her perspective and responding with a positive and open attitude. When the company is able to implement such a perspective, employees will trust the system and raise additional concerns, many of which may be valuable and lead to significant improvements.

When the company encourages employees to raise concerns and then fails to follow through, it has not only lost an opportunity to hear and implement meaningful changes, but also actively harms its employees by destroying any chance of trust that may occur in the process. Companies have to inject mindfulness into the process for listening and responding to employee concerns.

Perhaps companies should consider the lessons learned when we were children communicating to our parents or – better yet – when we were parents listening to our children.

About the Author

Michael Volkov is the CEO of The Volkov Law Group LLC, where he provides compliance, internal investigation and white collar defense services. He can be reached at mvolkov@volkovlaw.com. His practice focuses on white collar defense, corporate compliance, internal investigations, and regulatory enforcement matters. He is a former federal prosecutor with almost 30 years of experience in a variety of government positions and private practice.

Michael maintains a well-known blog: Corruption Crime & Compliance, which is frequently cited by anti-corruption professionals and professionals in the compliance industry. He has extensive experience representing clients on matters involving the Foreign Corrupt Practices Act, the UK Bribery Act, money laundering, Office of Foreign Asset Control (OFAC), export controls, sanctions and International Traffic in Arms, False Claims Act, Congressional investigations, online gambling and regulatory enforcement issues.

He has assisted clients with design and implementation of compliance programs to reduce risk and respond to global and US enforcement programs.

He has built a strong reputation for his practical and comprehensive compliance strategies. He served for more than 17 years as a federal prosecutor in the U.S. Attorney's Office in the District of Columbia; for 5 years as the Chief Crime and Terrorism Counsel for the Senate Judiciary Committee, and Chief Crime, Terrorism and Homeland Security Counsel for the Senate and House Judiciary Committees; and as a Trial Attorney in the Antitrust Division of the U.S. Department of Justice.

Michael also has extensive trial experience and has been lead attorney in more than 75 jury trials, including some lasting more than six months. His clients have included corporations, officers, directors and professionals in internal investigations and criminal and civil trials. He has handled a number of high-profile criminal cases involving a wide-range of issues, including the FCPA and compliance matters, environmental crimes, and antitrust cartel investigations in countries all around the world.

Representative Engagements

- Successfully represented three officers of a multinational company in two separate criminal antitrust investigations involving a criminal antitrust investigation in the District of Columbia and the Southern District of New York.
- Defended pharmaceutical company before the Food and Drug Administration and Senate Finance Committee relating to application for approval of generic drug.
- Conducted internal investigation which exonerated company against allegations of false statements in submissions to the FDA and against improper conduct alleged by Senate Finance Committee.
- Represented company before the US State Department on alleged violations of ITAR which lead to voluntary disclosure and imposition of no civil or criminal penalties.
- Advised several multinational companies on compliance with anti-corruption laws, and design and implementation of anti-corruption and anti-money laundering compliance programs.
- Advised hospitals, pharmaceutical companies and medical device companies on compliance issues relating to Stark law and Anti-Kickback law and regulations.
- Conducted due diligence investigations for large multinational companies for anti-corruption compliance of: potential third party agents, joint venture partners and acquisition targets in Europe, Africa, Asia and Latin America.
- Represented individual in white collar fraud case in Alexan-

dria, Virginia and secured dismissal of criminal charges and expungement of criminal record.

- Represented company before Congress and Executive Branch in effort to modify Justice Department regulations concerning use of federal funds.
- Advised and assisted World Bank in review of global corruption policies, enforcement programs and corruption investigations and prosecutions.

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